IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Mr. JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 21572 of 2004

Between:

1 Boppana Ramarao, S/o Venkata Raju,
2 Boppana Panasaramanna, s/o Venkata Raju,
3 Boppana Subba Rao, S/o Venkata Raju,
4 Boppana Satyanarayana, S/o Venkata Raju,
5 Boppana Veeraraju, S/o Venkata Raju,
(All the Petitioners are R/o Valluru Village, Kapileswarapuram Mandal, East Godavari District).

..... PETITIONERS

AND

1 Regional Joint Commissioner of Endowments, Kakinada, East

Godavari District.
2 Assistant Commissioner of Endowments, Rajahmundry, East

Godavari District.
3 Sri Venugopala Swamy Temple, Valluru Village, Kapileswarapuram

Mandal, East Godavari District, Rep. by its Executive Authority.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ, order or direction, more particularly one in the nature of Writ of mandamus declaring the action of the 1st respondent in disposing of the appeals filed by the petitioners vide order dt. 9-11-2004 without giving an opportunity to the petitioner or to the counsel as illegal, arbitrary and set aside the orders consequently declaring that the petitioners are entitle to continue in

subject matter of the lands by directing the respondents not to dispossess the petitioners from the lands in possession of the petitioners in an extent of Ac. 5.70 Cents in R.S.No. 271/4, 282/5A, 263/2A and 273/3B of Valluru village, Kapileswarapuram Mandal, East Godavari District by permitting the petitioners to take the existing crop from the said lands.

Counsel for the Petitioner:MR.T.V.S.PRABHAKARA RAO

Counsel for the Respondents 1 and 2: GP FOR ENDOWMENTS

Counsel for Respondent No.3 : Smt. N. Indrani

The Court at the stage of admission made the following ORDER:

Petitioners claim to be the tenants of Ac.5.70 cents of land, belonging to Sri Venu Gopal Swamy Temple, Valluru, East Godavari District, the third respondent herein. Originally, their father viz. Venkat Raju was the tenant. Proceedings were initiated for eviction. In view of the scheme framed by the Government in relation to the lease and sale of the properties belonging to the temples, and the benefit conferred therein in favour of the landless poor persons, the petitioners filed M.A.No.139 of 2003 before the Assistant Commissioner of Endowments, the second respondent, seeking a declaration that they are the landless poor persons. Through his orders dated 08.07.2004, the second respondent rejected the claim. Aggrieved thereby, they preferred individual appeals before the first respondent. Through a common order dated 09.11.2004, the first respondent rejected the appeals. Hence, this writ petition.

Learned counsel for the petitioners submits that the petitioners hold small extents of land and they are entitled to be recognized as landless poor persons. He submits that they are not provided with ample opportunity to put forward their case before the first respondent and the order under appeal cannot be sustained. He also contends that the respondents are not permitting the petitioners to remove the crop, which has been harvested, and are insisting on payment of the lease at the market rate.

Learned Government Pleader, on the other hand, submits that the first respondent followed the principles laid down by this Court in W.P. No. 1302 of 2003 and no exception can be taken to the order under appeal. She submits that the father of the petitioner was the original lessee of the extent more than Ac.5.00 of land.

The petitioners filed M.A.No.139 of 2003 before the second respondent to

recognize them as landless poor persons. If so recognized, the petitioners were entitled for certain benefits in the matter of grant of lease or sale of the lands. The second respondent rejected their claim through order dated 08.07.2004. Appeals preferred by them were also dismissed by the first respondent.

Had it been a case where it involved adjudication of disputed questions of fact, the complaint of the petitioners that they were not given ample opportunity would certainly have weighed with this Court. In the matter of recognition of tenants as landless poor, a Division Bench of this Court through its order dated 05.08.2003 in W.P.No.1302 of 2003 held that the extent of land, which was initially leased, has to be taken into account and not the subsequent partition among the legal representatives of the original lessee. It is not in dispute that the father of the petitioner was granted the lease over an extent of Ac.5.70 cents, which is the subject matter of the present proceedings. That being the case, no exception can be taken to the orders passed by respondents 1 and 2. The petitioners cannot be treated as landless poor. Now remains the question as to the amount of lease to be paid by the petitioners. According to them, they have been depositing the rent at 59 bags per year. Once it has emerged that they are not the landless poor persons, they are under obligation to pay the rent at market rate. It is too difficult to ascertain the same at this stage, since the crop has already been harvested. Taking the totality of the circumstances into account, this Court is of the view that a rent can be fixed at 15 bags per acre, which roughly comes to 90 bags only.

Therefore, the writ petition is disposed of directing the respondents to permit the petitioners to remove the harvested crop, on their depositing 90 bags of paddy. The respondents shall be entitled to resume the possession of the land forthwith. For the subsequent crops, it shall be open to the petitioners to participate in the auction along with the others. No order as to costs.

25.11.2004

ksld

To

1 Regional Joint Commissioner of Endowments, Kakinada, East Godavari District.

2 Assistant Commissioner of Endowments, Rajahmundry, East Godavari District.

3 The Executive Authority, Sri Venugopala Swamy Temple, Valluru village, Kapileswarapuram mandal, East Godavari district.

4 Two CCs. to the G.P. for Endowments, High Court of A.P., Hyderabad (OUT)

5 Two CD copies.